IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

RSA.No. 565 of 2007()

AS.85/2002 of I ADDL. DISTRICT COURT, KOLLAM
OS.106/1996 of ADDL.MUNSIFF COURT, KOLLAM

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: APPELLANT/APPELLANT/PLAINTIFF:

VIJAYALAKSHMI AMMA,
D/O.PADMAVATHY AMMA, MAVALI BHAVAN,
ADICHANALLOOR CHERRY, ADICHANALLOOR VILLAGE,KOLLAM

BY ADV. SRI.P.B.SURESH KUMAR
SRI.LEO GEORGE

RESPONDENTS: RESPONDENT/DEFENDANT:

SUMATHI AMMA, D/O. BHAGEERATHI AMMA,
THAIPARAMBIL, ADICHANALLOOR CHERRY,
ADCHANALLOOR VILLAGE, KOLLAM.

BY ADV. SRI.ALEX N.MATHEW (KOLLAM)
SRI.H.RAMANAN
SRI.JAMES JOSE

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.1172/2007 9IN R.S.A.565/2007

21.11.2007 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 565 OF 2007

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Dated this the 21st day of November, 2007

JUDGMENT

Plaintiff in O.S.106/1996 on the file of Munsiff Court, Kollam is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for declaration and injunction. Learned Munsiff granted a decree in part and fixed XY line in Ext.C8 plan, the boundary of plaint schedule property separating the property of respondent. Respondent was restrained by a permanent prohibitory injunction from trespassing into the plaint schedule property. No decree for declaration of title as sought for was grantedas the disputed property was found not part of the property of appellant. Appellant challenged the decree and judgment before District Court, Kollam in A.S.85/2002. Learned District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It

is challenged in the second appeal.

2. As per Exts.C8 plan Commissioner identified plots 1 to 3 as property of appellant and plot 7 as the property of respondent. The actual dispute between the parties is with regard to the southern boundary of plot No.3 which is the northern boundary of plot No.7. Commissioner fixed XY as the separating boundary. Learned Munsiff and learned Sub Judge accepted XY as the correct boundary line and granted a decree in accordance with Ext.C8 plan. The said concurrent decree is challenged in the second appeal.

3. Learned counsel appearing for appellant and learned counsel appearing for respondent, who appeared on getting notice in the application filed to condone the delay in filing the appeal, were heard.

4. The argument of learned counsel appearing for appellant is that courts below did not properly consider the objection raised to the correctness of the identification made by the

Commissioner in Ext.C8 plan and therefore should not have fixed XY as the separating boundary line. Learned Munsiff elaborately considered the correctness of the identification and found that in Ext.C8 plan, the properties are correctly demarcated. Learned District Judge reanalysed the evidence and found that the objection raised to the correctness of Ext.C8 plan is not sustainable. Learned District Judge has given cogent and valid reasons for arriving at that finding. That concurrent finding of fact cannot be interfered in exercise of the powers of this court under section 100 of Code of Civil Procedure. On going through the judgment finding of fact is seen arrived at on correctly analysing the evidence. At any rate, it cannot be said that appreciation of evidence was perverse. Therefore the appeal is dismissed in limine as no substantial question of law is involved in the appeal.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006